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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,709	01/28/2005	Stefan Bccsc	246472007400	8864
25227	7590	06/29/2007	EXAMINER	
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 400 MCLEAN, VA 22102			REYNOLDS, STEVEN ALAN	
		ART UNIT		PAPER NUMBER
		3728		
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		06/29/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/522,709	BEESE, STEFAN
	Examiner	Art Unit
	Steven Reynolds	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 January 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/28/05</u> | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Drawings

1. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4, 6 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by White (US 3,327,918). White discloses a packaging for foodstuffs comprising a bottom part (10) having at least one row of shaped depressions (16) formed therein for accommodating separate articles, and a lid part (12) configured for swing action on the bottom part, the bottom part and the lid part being provided with complementary clamping elevations (bottom portion of compartments 16) and clamping openings (openings between gables 28 and bar 42), wherein the clamping openings are arranged

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on the lid part, and the clamping elevations are arranged on the bottom part, the clamping openings being offset in relation to the clamping elevations; the clamping openings are arranged approximately centrally over adjacent clamping elevations; the top edge of the lid part is configured such that the spacing of the nearest clamping opening is less than or equal to the free spacing between two adjacent clamping elevations; at least six clamping elevations arranged in a double row are provided; and the articles being packaged are eggs.

4. Claims 1-4, 6, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Newsom (US 2,160,893). Newsome discloses a packaging for foodstuffs comprising a bottom part (16) having at least one row of shaped depressions (depressions between outer walls of the bottom part and columns 32) formed therein for accommodating separate articles, and a lid part (17) configured for swing action on the bottom part, the bottom part and the lid part being provided with complementary clamping elevations (28) and clamping openings (31), wherein the clamping openings are arranged on the lid part, and the clamping elevations are arranged on the bottom part, the clamping openings being offset in relation to the clamping elevations; the clamping elevations and the clamping openings appear to be no higher or deeper than a maximum nesting height of 4 to 15 mm; the clamping openings are arranged approximately centrally over adjacent clamping elevations; the top edge of the lid part is configured such that the spacing of the nearest clamping opening is less than or equal to the free spacing between two adjacent clamping elevations; at least six clamping

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elevations arranged in a double row are provided; the clamping elevations and the clamping openings appear to be no higher or deeper than a maximum nesting height of 7 to 9 mm; and the articles being packaged are eggs.

5. Claims 1, 6 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al. (US 4,205,777). Brown et al. discloses a packaging for foodstuffs comprising a bottom part (1) having at least one row of shaped depressions (14) formed therein for accommodating separate articles, and a lid part (2) configured for swing action on the bottom part, the bottom part and the lid part being provided with complementary clamping elevations (15) and clamping openings (32), wherein the clamping openings are arranged on the lid part, and the clamping elevations are arranged on the bottom part, the clamping openings being offset in relation to the clamping elevations; at least six clamping elevations arranged in a double row are provided; and the articles being packaged are eggs.

6. Claims 1, 5, 6, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Lemaire (US 5,695,062). Lemaire discloses a packaging for foodstuffs comprising a bottom part (5) having at least one row of shaped depressions (19) formed therein for accommodating separate articles, and a lid part (21/23) configured for swing action on the bottom part, the bottom part and the lid part being provided with complementary clamping elevations (bottom portions of pockets 19) and clamping openings (portions between walls 32 and 34), wherein the clamping openings are

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arranged on the lid part, and the clamping elevations are arranged on the bottom part, the clamping openings being offset in relation to the clamping elevations; the clamping elevations and the clamping openings appear to have a conicity of 2° to 15°; at least six clamping elevations arranged in a double row are provided; the clamping elevations and the clamping openings appear to have a conicity of 7° to 9°; and the articles being packaged are eggs.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 7-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over White (US 3,327,918) in view of Lapp (US 5,282,534). White discloses a trough (area between 50 and 42), which is open in the upward direction. White discloses the claimed invention except for the cover, which closes off the trough in the upward

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direction. However, Lapp teaches label (sticker 32) covering the top of the package for the purpose of securely holding a coupon pack until label is removed to access the coupon pack. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of White with the cover as taught by Lapp in order to enclose coupons to be accessed by the user.

Regarding claims 9-12 and 14, the modified device of White discloses the lid part is provided with retaining depressions (spaces between eggs 50) connected to the trough; the trough and the retaining depressions have approximately the same depth; the trough or the retaining depressions has a depth which is no greater than a maximum nesting height of the foodstuffs packaging; the retaining depressions are offset laterally in relation to the shaped depressions; and the clamping openings are formed by the retaining depressions

10. Claims 7-9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (US 4,205,777) in view of Lapp (US 5,282,534). Brown et al. discloses a trough (area between 30 and 31), which is open in the upward direction. Brown et al. discloses the claimed invention except for the cover, which closes off the trough in the upward direction. However, Lapp teaches label (sticker 32) covering the top of the package for the purpose of securely holding a coupon pack until label is removed to access the coupon pack. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device

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of Brown et al. with the cover as taught by Lapp in order to enclose coupons to be accessed by the user.

Regarding claims 9, 12 and 13, the modified device of Brown et al. discloses the lid part is provided with retaining depressions (49) connected to the trough; the retaining depressions are offset laterally in relation to the shaped depressions; and the retaining depressions have an indent (46) on their floor.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carter (US 5,582,297) and Jacobs (US 4,742,953)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Reynolds whose telephone number is (571)272-9959. The examiner can normally be reached on Monday-Friday 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SR

6/20/07



Mickey Yu
Supervisory Patent Examiner
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